IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 319 OF 2007

Shri Jagannath Kashiram Sawant ... Applicant

Versus

State of Maharashtra & Anr. ... Respondents

Mr. Sachin Masurkar, Advocate, for the applicant.
Mrs. Geeta Mulekar, AGP, for Respondent No.1-State.
Mr. sachin Gite, Advocate, for Mr.M.S.Karnik, Advocate for Respondent No.2.

CORAM: J.H.BHATIA,J.

DATE: 26th November,2007.

P.C.

1. Heard learned Counsel for the parties.

2. Respondent No.2 is the original plaintiff in Regular Civil Suit No.8 of 1972. The suit was filed against the father of the present applicant for perpetual injunction restraining him from causing any

encroachment in possession of the plaintiff over the suit land. The defendant therein contended that he was in adverse possession of the land. However, that contention was rejected and the decree for perpetual injunction came to be passed on 31.1.1977. That decree has become final. The defendant i.e. father of the present applicant died in the year 1981.

3. Respondent No.2 filed Regular Darkhast No.27 of 2004 for execution of the decree for perpetual injunction on the ground that the applicant, who claims through his father, has started obstructing his possession. Thus, he has committed breach of that order. In that matter, the present applicant appeared and filed objection under Section 47 of the C.P.C. contending that his father was in possession of the land since 1979 and after the death of his father, he is in actual possession of the property. According to him, he has become owner of the property by adverse possession and the execution is barred by limitation. The applicant was shown as an heir of the judgment debtor in the execution proceedings. The applicant examined himself and three other witnesses in support of his contention that he is in actual possession of the land.

4. After hearing the evidence, the learned trial Court rejected the objection filed under Section 47 of

the C.P.C. The learned trial Court noted that even in Suit No.8 of 1972, father of the present applicant had taken a plea of possession and issue No.4 to that extent was framed and that was replied in negative by the trial Court and had held that the plaintiff-respondent No.2 was the owner and in actual possession of the land. That judgment and decree has become final. In such circumstances, the contention of the applicant that his father had taken possession of the land in 1979 cannot be accepted, particularly when his father had contended that he was in possession for more than 12 years even prior to the filing of the suit in 1972. In fact, the decree was passed in 1977 and that decree has become final. In such circumstances, I find no illegality or irregularity or fault in the findings of the trial Court that objection taken by the applicant is without any substance.

5. In the result, the Civil Revision Application stands rejected.

(J.H.BHATIA,J.)